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Division of Open Government  
Proposed Amendment to 940 CMR 29.02  
Definition of "Intentional Violation"  
Issued: May 11, 2012

The Attorney General is issuing a proposed regulation that would amend the definition of the term "Intentional Violation" currently found at 940 CMR 29.02. If adopted, the amendment would clarify the standard for a finding by the Attorney General of an intentional violation of the Open Meeting Law.

In December 2011, the Attorney General issued a proposed regulation that would have defined the term "Knowing or Knowingly" with respect to the Open Meeting Law. Following the public comment period and a hearing on that regulation, the Attorney General proposes, in the alternative, amending the current definition of "Intentional Violation."

The Attorney General's Open Meeting Law regulations currently read:

Intentional Violation means an act or omission by a public body, or a member of a public body, that knowingly violates M.G.L. c. 30A, sec. 18-25. Conduct in violation of M.G.L. c. 30A, sec. 18-25, shall be considered evidence of an intentional violation where the body or member has previously been informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08 that the conduct violates M.G.L. c. 30A, sec. 18-25.

940 CMR 29.02. The proposed regulation would amend the definition to read:

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, sec. 18-25. Conduct in violation of M.G.L. c. 30A, sec. 18-25 shall be considered evidence of an intentional violation where the public body or public body member acted with specific intent to violate the law; acted with deliberate ignorance of the law's requirements; or was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, sec. 18-25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, or acted in good faith compliance with the advice of the public body's legal counsel, such conduct will not be considered an intentional violation of M.G.L. c. 30A, sec. 18-25.

The Open Meeting Law states that "following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional." G.L. c. 30A, § 23(c). The Attorney General may "impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation." G.L. c. 30A, § 23(c)(4). Furthermore, the Attorney General's Open Meeting Law

regulations state that, upon the finding of an intentional violation, the Attorney General may impose “a fine upon the public body of not more than \$1,000 for each intentional violation.” 940 CMR 29.07(3)(d).

The Attorney General will hold a public hearing on the proposed regulation pursuant to G.L. c. 30A, § 2. **The hearing will be held at One Ashburton Place, 21<sup>st</sup> Floor, Boston MA, on Tuesday, July 17, 2012 from 3:00PM to 5:00PM.** Copies of the proposed amendment to the regulation can be found at [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting) or may be obtained at One Ashburton Place, 20<sup>th</sup> Floor, Boston, MA. If any member of the public wishing to attend this hearing seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Philip Mantyla at 617-963-2055, or at [Philip.Mantyla@state.ma.us](mailto:Philip.Mantyla@state.ma.us).

The public is also encouraged to submit written comments on the proposed regulation. Comments should be limited to the proposed regulation only. Please direct comments to Amy Nable, Director, Division of Open Government, Office of the Attorney General, One Ashburton Place, 20<sup>th</sup> Floor, Boston, MA 02108 or by sending comments by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us). **Comments must be submitted by July 17, 2012 at 5:00PM.**